

81  
January 9. 1751.

# INFORMATION

F O R

*Alexander Clunie, John Hegginson, John Ramsay  
and James Crichton, Merchants in Perth, and  
other Defenders,*

A G A I N S T

*Walter Miller Procurator Fiscal of the Borough  
Court of Perth, Pursuer.*

**T**HAT a Spirit, which for some time past, has prevail-  
ed so universally over this whole Country of dis-  
countenancing the Importation of foreign Brandy,  
and other spirituous Liquors, has encouraged many  
private Adventurers, as well as Societies, to erect Distilleries  
at a very great Expence, in the View of promoting this  
Branch of home Manufacture, and the Consumpt of our own  
Grain.

*Alexander Clunie, and the other Defenders above named,*  
were the first Adventurers in a Project of this Kind, in or a-  
bout the Town of *Perth*; in the View of which, as they  
could not find a convenient Place within the Borough, for e-  
recting this Distillery, with such other Conveniencies as they  
had Occasion for; they purchased a Piece of Ground from a  
Gentleman in that Neighbourhood, whereupon they erected  
proper Offices, purchased Utensils, &c. which cost them near  
1500 *l. Sterling.*

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As the Establishment of this Manufactory was not gone about in a clandestine or hidden Way; the Defenders did little imagine, that an Undertaking of this Kind could give any Umbrage, on the contrary. they had Reason to hope for all the Countenance and Encouragement that was justly due to so commendable a Project, or at least, that they should have been timeously certiorated to desist from launching out into so great an Expence, which is likely to be totally lost, should the Pursuer prevail in the Action that is now depending in this Court.

This Manufactory, in its original Formation, was only intended for the distilling of Spirits, which therefore did no ways interfere with the Brewers in *Perth*, so that the Defenders expected to be abundantly supplied from one or other of these Breweries, in such Quantities of Yest as was necessary for the Distillery.

In this however the Defenders soon found themselves disappointed; the Brewers in *Perth* some how or other intimidated, did not chuse avowedly to furnish any Quantity of Yest for the Use of this Distillery: Nor shall the Defenders pretend to say what Influence was used, or by whom, to crush this Undertaking. Thus far is certain in Point of Fact, that the Defenders were refused the ordinary Supply of Yest from the Brewers of *Perth*, without any Cause assigned therefore.

To obviate this Difficulty, the Defenders were obliged to enlarge their first Project by the Addition of a Brewery, which, for some little Time, they carried on with tolerable Success; the Ale that they brewed, being of so much a better Quality than what was usually furnished by the common Brewers within the Town, that the Merchants and other Inhabitants, within the Burgh, were solicitous to be furnished with Ale from this Brewery, as the distilled Spirits had by this Time gained a Character both in Town and Country.

No sooner was this Difficulty removed, than the Magistrates of *Perth*, under the Influence of some who had been pleased



to look upon this Project with an envious Eye, thought proper to throw fresh Discouragement in the Way by two several Acts of Council past upon this Occasion.

By the first of these they laid a Duty of Twopence upon each Gallon of home Spirits imported into the Town, though *French Brandy* and *English* Spirits, Ale and Porter, which are daily imported in large Quantities, have not hitherto been subjected to any such Impost.

By the other Act of Council they inhibited and discharged all the Inhabitants to import into the Town any Ale or Beer brewed without the Liberties thereof, under the Penalty of 5 *l. Sterling* for each Transgression, ' In the first Instance, ' and under such further Penalty for any subsequent Transgression, as the Magistrates before whom the Cause is brought, ' shall find just to be paid to the Town Treasurer for the ' Time, and to be applied by the Magistrates for the publick ' Use of the Burgh; and they thereby further enacted and ' appointed the Magistrates for the Time being, to cause all ' Ale or Beer brewed without the Liberties of the Town, and ' imported by Strangers for Consumpt in the Town, to be ' seized and confiscated, &c.'

The Defenders being caught in this Snare, were sued by the Procurator Fiscal before the Magistrates of *Perth* for this Penalty of 5 *l.* which Process being brought by Advocation before your Lordships; the Lord *Kilkerran* Ordinary is to report the Debate, and this Information is humbly offered on the Part of the Defenders.

The Expediency of this Act of Council was pretended to be justified from a twofold Consideration, 1<sup>st</sup>, A consequential Damage that might thence accrue to the Town's Mills by their being deprived of that Multure, which must have been paid for the Grain thus manufactured, had the same been brewed within the Borough. 2<sup>dly</sup>, For that the common Brewers, within the Borough, would in like Manner be thereby prejudged, as the Defenders would be thus enabled to furnish



nish Ale of a better Quality, or at a lower Price than the Brewers within the Town. The acclaimed Thirlage of the Town to its own Mills was yielded to be foreign to the present Issue; and as there neither is nor can be any Incorporation of Malsters or Brewers, whose seclusive Privileges might be thereby hurt; the Pursuers were in like Manner forced to admit, that the Brewers, within the Town of *Perth*, had no such Right or Interest as entitled them to complain in a legal Way, especially as the Defenders, who are all Burgeses and Guild Brethren in the Town of *Perth*, bear and pay their Share of all the publick Burdens in due Proportion with the other Burgeses.

But abstracting from these Considerations, it was said, that the Town of *Perth* was, by its several Grants and Charters, intitled to the same Rights and Privileges as any of the other Royal Boroughs in this Part of the United Kingdom; that the Magistrates of this Borough were intitled to make such Acts and Regulations as were manifestly for the general Good and Utility of the Community, and which were binding upon the Burgeses and Inhabitants thereof. That the Erection of a Burgh Royal does include all the Rights, Powers and Privileges of a Barony. That it is competent for every Baron to establish Breweries within his own Barony, and to prohibit the Importation of Ale brewed, without the Barony, so long as the Inhabitants can be supplied with sufficient Ale brewed within the Barony; and more particularly that by the Statute 1535, *cap.* 13. For eschewing of exorbitant Prices tane of the King's Lieges travelling through the Realm, and of the Prices of Victuals, Flesh and Fish, it was statuted and ordained, That Letters be directed to command and charge all Provosts, Aldermen, Baillies and Officers of Boroughs, both to Regality and Royalty, and also Lords and other Barons, that has Burgh in Barony, and Hostellaries on their Lands, that they cause Hostellaries both to Burgh and to Land, ilk Man within himself and Bounds of his Office, to have honest



• nest Chambers and Bedding for receiving of all Passengers  
 • and Strangers passing and travelling through the Realm, well  
 • and honestly accoulted with good and sufficient Stables,  
 • with Heck and Manger, Corn, Hay, and Straw for their  
 • Horse, Flesh, Fish, Bread and Ale, with other Furnishing  
 • for Travellers, to be sold upon an competent Price, and  
 • that they set yearly Prices thereupon, as the said Hostella-  
 • ries may live and sustain their Lodgings, under the Pain to  
 • be called and punished therefor at the King's Grace's Will.'  
 From which the Pursuer was pleased to infer, that as the esta-  
 blishing and Superintendency of these Hostellaries, and cau-  
 sing them provide proper Vivres for the Conveniency of Tra-  
 vellers and others, and setting Prices thereon, was by the said  
 Statute committed to Magistrates within Borough, it was ne-  
 cessarily implied and understood to be competent to the Ma-  
 gistrates of such Boroughs to prohibit the Importation of Ale  
 brewed without the Borough.

These Particulars will in the Sequel appear to be absolute-  
 ly insufficient for justifying either the Expediency or Legality  
 of this Act of Council. But in the Entry the Defenders will  
 be allowed to observe, that this is a Question of great Impor-  
 tance, and of general Influence, nowise peculiar to the Burgh  
 of *Perth*, but which equally respects all the other Royal Bo-  
 roughs in *Scotland*; though, it is believed, that this is the  
 first Instance where any of the Royal Boroughs have assumed  
 the Power of passing such an Act, the plain Tendency of which  
 is not only to prohibit the Lieges in general from this Branch  
 of Commerce with the Inhabitants within Borough, but to re-  
 strain the Burghesses and Inhabitants themselves from import-  
 ing within the Borough any Quantity of Ale brewed without  
 the Liberties thereof, which is in other Words to establish a  
 Monopoly in favours of the Brewers within the Borough, tho'  
 these are admitted to be no Body Corporate, having any such  
 seclusive Privilege. Monopolies of this Kind are now justly  
 esteemed to be publick Nuisances: Where Incorporations are

established, these must no doubt be supported while the Law stands as it does; but where no such Incorporations exist, it is the natural Privilege of the whole Lieges to purchase every Commodity of Life where they please, and as they can best be served; and it is perverting the Privileges of Boroughs to make this a Handle for imposing such a Restraint upon the Burgessees themselves, for whose Benefit and Utility these Privileges are supposed to have been granted; and far less can Magistrates wantonly lay Duties or Customs on Spirits at their Pleasure; for if they are allowed to add a Penny on the Gallon, it is hard to say where it may stop, the same Authority may impose a Sixpence or a Shilling, or any Sum they please, and so absolutely destroy a lawful Branch of Commerce.

2dly, An Attempt of this Kind from the Magistrates of *Perth* was the more unexpected, as this Burgh is in no such straitened Circumstances, as to render it expedient to distress or disquiet the Inhabitants, in order to aggrandize the Town's Revenue, which is already so overgrown, that it is become Matter of some Difficulty how to dispose of it in a decent Manner: And when by a late Judgment touching the Importation of Flour, which by another Act of Council the Magistrates thought proper to prohibit, under the like Pretence, that this would be prejudicial to the Town's Mills, to which the Inhabitants were said to be thirled *quoad inveſta & illata*; it was found with great Unanimity, that this was *ultra vires* of the Magistrates to pass any such Act of Council, and that the Importation of Flour did not fall under the alledged Thirlage of *inveſta & illata, eſto* such Thirlage had been constituted, which, at the same time, was not admitted; so that *a fortiori*, as the Importation of Ale brewed without the Borough stands upon the same general Principles of natural Right, and has no Connection with the alledged Thirlage of *inveſta & illata*, it is hard to conceive any solid Foundation, either in Law or Reason, for justifying a Prohibition of this Kind.

3dly, More especially considering, that a Restraint of this Kind

Kind is in direct Opposition to the universal Practice of the whole Nation, and of all the Royal Boroughs, this being the first Instance, so far as the Defenders can learn, where an Attempt of this Kind has been made. The Town of *Edinburgh* has its common Mills as well as the Town of *Perth*, the Inhabitants of the one consume tenfold what can possibly be used in the other: The Advantage which would accrue to these Mills was every Grain of Malt made into Ale that is consumed within the Town of *Edinburgh*, to be brought to the Town's Mills, and pay Multure therefor, would be very considerable; but the Magistrates of *Edinburgh*, who are as well disposed as those of any other Borough, to take every legal Advantage of this Kind, from which so great a Benefit would accrue, have not hitherto been advised that it was competent for them to impose a Restraint of this Kind, whereby the Lieges in general should be prohibited from importing Ale within the Borough, or the Inhabitants restrained from purchasing the same; so that it well merits your Lordships Attention in establishing a Precedent of this Kind, which would be attended with such general bad Consequences of fixing a Monopoly to the Brewers within Burgh, where, *ex concessis*, they neither are, nor can have the Privileges of an Incorporation.

4thly, The several Acts of Parliament in Favours of many of the Royal Boroughs in *Scotland*, granting a Duty of two Pennies *Scots* upon every Pint of Ale, brewed, imported and vended within the Liberties of any of these respective Boroughs, is an irrefragable Proof, a Declaration by the Legislature itself, that it was the Privilege of the Lieges in general, whether residing within or without the Borough, to import and vend the Ale by them brewed, in the same free Manner as any other Commodity not falling under the seclusive Privileges of any Incorporation, may be imported and sold; and consequently that the Burgeffes and other Inhabitants within Burgh were at Liberty to purchase this common and necessary Commodity of Life where they pleased, and as they could



could best be served. It was not the Scope of these Statutes to authorise the Importation of Ale where such Importation was in other Respects contrary to Law or the Privilege of the Burgh ; but it was held and considered by the Legislature, that as there could be no Incorporation of Maltsters or Brewers, it was lawful for the Burgessees to purchase, and for the Lieges to import this as well as any other Commodity of Life, for the Supply of the Burgessees, Inhabitants and others, having daily Occasion to resort to these Boroughs ; and upon that Supposition were these Grants obtained, imposing the aforesaid Taxation upon every Pint of Ale brewed, imported and vended within the Borough. Such in particular is the Case of the Town of *Edinburgh*, by the later and more ancient Grants of this Impost, upon the Plan of which the like Grants have been obtained by Acts of Parliament in Favours of many of the other Boroughs in *Scotland*.

These Observations being premised, a very few Words shall suffice in Point of Argument upon the several Topicks or Considerations that have been suggested on the Part of the Pursuer in Defence of this Regulation.

And 1<sup>st</sup>, with regard to the inductive Causes whereby this Regulation is pretended to be justified, the Defenders are advised that these are quite foreign to the Issue. If the Magistrates have by Law Power to impose a Restraint of this kind, it matters not whether it is expedient or not ; as on the other Hand, the Expediency of such a Regulation, if not founded in Law, will not support the same.

The first of these regards the Advantage which would accrue to the Town's Mills by giving a Monopoly to the Brewers within the Burgh, of every Drop of Ale that is therein consumed, as the Consequence thereof would be that these Brewers supposed to be astricted to the Town's Mills would be obliged to carry their whole Malt to be grinded at the Town's Mills, and to pay Multure therefor ; and if this pretended Thirlage, which the Inhabitants are far from acknowledging

ledging, did extend to the Ale imported, so as to constitute a dry Multure thereon, the Defenders should readily admit that this of itself would be sufficient to justify every reasonable Regulation calculated to prevent the eluding of that Thirlage. But as this is not so much as pretended, any consequential Advantage which might accrue to the Town's Mills by receiving Multure in any Case to which the Thirlage does not extend, is so remote and consequential an Interest, that it cannot merit the least Regard. This was the Pretence assumed to justify the other Act of Council, prohibiting the Importation of Flour, and with the same Reason might be extended to the Importation of every other Commodity of Life. What for an Argument would it be, to prohibit the Importation of Meal, or to restrain the Burgeses and Inhabitants from purchasing the same without the Borough, that there were a Parcel of Meal-makers within the Town, who brought the Corns by them grinded to the Town's Mills, for which they paid Multure, and who could supply the Inhabitants? This was justly over-ruled in the late Question touching the Flour. It would be equally absurd in Case of Meal, or any other Commodity of Life upon which the Law had laid no Restraint. And the Argument concludes *à fortiori* to the Case in Hand, where it is an agreed Point that the alledged Thirlage of *investa & illata* does not at all enter into the Question.

The only other Reason assigned for justifying the Expediency of this Act of Council, is the Interest of the Brewers residing within the Borough; by which, if the Pursuer intends that the Inhabitants, when thus left at Liberty to supply themselves as they can best be served, may be furnished with Ale of a better Quality, or at a lower Price than is exacted by the Brewers residing within the Town, the Defenders do not hesitate to say that this is the strongest Consideration for evincing the Injustice of this Regulation, as it must be for the Advantage of every Community to be furnished with the Ne-

cessaries of Life at the easiest Rates possible. Restraints of this kind, arising from the Privileges of particular incorporated Bodies, is the Grievance so justly complained of upon Account of these Monopolies, and tho' these must be supported while the Law stands, to extend these to similar Cases, where there are no such Incorporations, is a gross Abuse of Power, which no general Clauses in the Charters of Erections of Royal Boroughs, giving them Power to make Acts and Regulations for the Government of the Community, can justify. The Interest of the whole, in Competition with that of a few Individuals, must always prevail; and any trifling Advantage which, by the Observance of this Regulation, might accrue to the Town's Mills, is below the Observance of the Law. At the same Time that the Defenders cannot discover where this Disproportion should ly, if it is not that the Brewers within the Borough, as having the Inhabitants thirled to them by this illegal Act, may be tempted to make their Ale of a smaller Quality, or to exact a higher Price than would otherways be reasonable. But be that as it will, if there is here no Incorporation of Brewers, as is acknowledged, if the Inhabitants are not by Law thirled to these Brewers, they ought to be at Liberty to purchase this and every other common Necessary of Life as they can best be served.

These Preliminaries being discussed, the material Point in Dispute remains, *viz.* Whether it was competent for the Magistrates of this Burrow to impose a Regulation of this Kind; this the Pursuer maintains upon the following Grounds, That the Erection of a Burgh Royal does include all the Rights of Barony; that a Baron can restrain the Importation of Ale that is brewed without the Barony; and therefore that the Magistrates of a Royal Burrow may prohibite Ale from being imported within the Borough that is brewed without the same, and that the Magistrates Power in this Particular is declared and established by the above-recited Statute 1535.

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The Defenders on the other Hand are advised, that the whole of this Argument proceeds upon a Supposition manifestly erroneous, and assumed without Authority, *viz.* That the Erection of every Royal Borough does carry the Right of Barony, whereas the Defenders apprehend, that these have no earthly Connexion with one another; that they are Grants of different Natures, to very different Purposes, and consequently operating different Effects, and therefore that the Argument cannot proceed from the one to the other.

And in order to explain what is hereby intended, it will be considered, that the Erection of a Barony is a Grant in Favour of the Baron himself: He is Proprietor of the Ground, consequently intitled to every Benefit or Advantage that can arise out of that Subject. He can thirle his Barony to his own Mill, he can establish Hostellaries, Breweries, Smiddies, &c. for the Conveniency of those who reside within the Barony; every Inhabitant within that Barony is subject to be removed at his Pleasure; or if he chuses to reside within the Barony, must submit to the Rules prescribed.

Nor in this Particular is there any Difference betwixt the Erection of a Barony and any common Grant of Lands; for whatever is implied in, or consequential to Property, is carried by the Grant of the Lands themselves, whether expressed or not; and it is but the Superfluity of Stile that has introduced the particularizing of these in Charters, &c.

Nor is it any Impeachment of this, That the Erection of a Barony does carry certain Privileges, Jurisdiction, &c. which would not be carried by a general Grant of Lands not so erected. The Privilege of Brewing is none of these; every Man may set up a Brewery within his own Property, whether erected into a Barony or not, and whether the Lands are disposed *cum breueriis* or not, as was decided by your Lordships as far back as the Year 1681, in the Case of Sir *Patrick Nisbet*, where it was found that a Vassal infeft in his Feu *sine breueriis*, might brew or use any other Manufactory

ry without Licence of his Superior. And again, in a late Question betwixt Sir *Walter Montgomery* and *Wardrop*; and as the Ale so brewed is the Subject of Commerce, he may sell the same to any of the Lieges who are not restrained from buying. And agreeably to this, the Pursuer is forced to admit, that every Burgeſs or Inhabitant of *Perth*, may, if he pleases ſet up a Brewery within the Borough, tho' he ſtill contends that they may be restrained by Acts of Council from importing Ale that is brewed without the Town.

Sir *Thomas Craig lib. 2, Dieg. 8.* under the Title, *Quid juris vaſſallus ex inveſtitura conſequatur*, under the Words, *Cum fabrilibus*, &c. explains himſelf thus, *Fabrilia, braſſina, brueria ſolent exprimi, quia antiquitus non licebat ubicunque quis vellet fabricam extruere, neque braſſinam aut brueriam exercere, niſi expreſſe à domino concederetur: nam cum ad hoc genus hominum turbæ ſapiffime neceſſitate adductæ confluere ſoleant, cum eorum commodo, id ſibi domini arrogarunt, ut nemo hæc exercere poſſit niſi cui a domino loci ſpecialiter eſſet permiſſum.* So that the Reason aſſigned by this learned Author for the Adjection of this Clause, was not any Doubt that theſe would have been carried under a general Grant of the Lands themſelves, but that of old theſe Places of Rendezvous gave Occaſion to Tumults and Disorders; wherefore the Over-lord was underſtood to have retained theſe to himſelf, if not expreſſed; but as that Reason ceaſed ſome Ages ago, theſe and other exegetick Clauſes of Stile have been continued, though it is a clear Point, that whether expreſſed or not, theſe Particulars would be comprehended: So that the Privilege of Brewing is the natural Conſequence of a Right of Property in the Lands themſelves; and whatever Powers a Baron may have of prohibiting Ale to be imported within the Barony without his Licence, it will not thence follow that the Magiſtrates of Royal Boroughs have

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have the same Power, or that a Right of Barony is comprehended in the Erection of every Royal Borough.

These Boroughs are not of the Nature of private Grants of Property; they are established for the general Benefit and Utility of the whole Nation; neither the Lands themselves, nor the Freedom of the Borough can be alienated; they remain *inter regalia*; the Baillies are the King's Baillies, though the electing of these is granted to the Borough itself, and every Individual is the King's Vassal in those Burgage Tenements; the Extent of their Privileges, abstracting from some few Particulars established by publick Law, and the Extent of their Jurisdiction, is limited and ascertained by their Charter of Erection, and other subsequent Grants: And so far is it from being true, that either the Right of Barony, or the Jurisdiction of a Sheriff, is implied in the Erection of a Royal Borough, that neither the one nor the other of these is understood to be granted unless expressed.

Thus we find in the *leges burgorum, cap. 19. Quod in burgo non debet audiri bloodwit, marchetæ, herezeld, nec aliquid de similibus*; upon which Sir John Skeepe remarks, *Quod hujusmodi privilegia & immunitates pertinent ad barones, & non ad burgenses, nisi jus baronum & vicecomitum habeant sibi concessum*. An Authority in Point that neither the Right of Barony nor of Sheriffship is implied in the Erection of a Royal Borough, *Nisi jus baronum aut vicecomitum habeant sibi concessum*. And accordingly it appears from the Charters of the Town of *Perth*, that they are created Sheriffs within themselves; which Jurisdiction they accordingly enjoy at this Day; but as none of their Charters contain a Grant of Barony, or of the Privileges thereto pertaining, it is *gratis dictum* that they have any such Right.

And Sir Thomas Craig, treating of the *Feudum nobile, & minus nobile, lib. 1. dig. 10.* under these Words, *de feudo burgali*, explains the Law thus, *Tertium membrum divisionis est feudum burgale sive plebeium, quod nunquam nobilitat, nam præsum-*



*ptio juris est, ut antea dixi, burgenſes omnes manuali aliquo quaestu, ſive arte aliqua ignobili vitam producere; hi autem burgi apud nos inter regalia æſtimantur, neque cum territorio alienantur niſi expreſſa eorum fit mentio; ſed burgi præcipue ex immunitatibus & privilegiis, quæ à principe conceduntur, conſiſtunt.* So that the Grant from the Crown is the Measure of the Right thereby conferred; nothing is given that is not expreſſed, and nothing implied that is not eſſential to the Conſtitution of a Body corporate.

As the Grant of a Barony includes that leſſer Degree of Jurisdiction, ſo it is underſtood that the *exitus curiæ* do likewise belong to the Baron, whether ſpecially granted or not in the Charter of Erection, the Reason of which apparently is, that the Erection being ſolely in his Favours, and the Property being veſted in him *pleno jure*, whatever iſſues from that Property, or from the Exerciſe of the Jurisdiction there-to annexed, belongs to the Baron.

And if the Right of Barony was implied in the Erection of every Royal Borough, the *exitus curiæ* muſt of Courſe belong to the Borough. But this, it is believed, will not be pretended. The Erection of the Borough gives no Jurisdiction; they are but the Delegates of the Crown to the Purpoſe of electing the Magiſtrates of the Burgh: Theſe, when elected, are the King's Baillies, and the *exitus curiæ* are accountable for in Exchequer as any other Part of the King's Revenue, though in moſt Caſes it happens, that the Profits ariſing from theſe Courts are granted to the Borough itſelf, for particular Uſes and Purpoſes, as in the Caſe of the Borough of *Perth* they are granted and appropriated for upholding the Bridge of *Tay*.

To this Purpoſe Lord *Stair*, *lib. 2. tit. 3. parag. 64.* remarks, that as the Courts of Barons and Freeholders have theſe Reſtrictions more than the inferior Judges, ſo they have this Advantage ordinarily, that all the Profits and Iſſues of their

Courts

Courts belong to themselves; and Sir *Thomas Craig*, Tit. *De regalibus*, says, *Quod multarum pœnarumque compendia etiam inter regalia numerantur, nisi si quæ speciali jure concedantur, quales in regalitatibus & baroniis, & similibus*. But as this will by no means apply to the Case of a Royal Borough, which is itself *inter regalia*, it is not true, as the Pursuer has assumed, that a Right of Barony is included in the Erection of a Royal Borough; the Erection of these is of a quite different Nature, and to quite different Purposes. The Grant of a Barony is a Right of absolute Property, nor can any Man set his Foot therein without the Proprietor's Consent. But this is not the Case of Royal Boroughs, they are established in different Parts of the Country, for the Convenience of the whole Lieges. No Man can be denied Access to a Royal Borough, either for selling or purchasing the Necessaries or Conveniencies of Life; they are in many Respects *juris publici*, and must be patent to the whole Lieges, but Prejudice of any exclusive Privileges, with which they are endowed by particular Grants.

But supposing, for Argument's Sake, that this Right of Barony was implied in the Erection of every Royal Borough, it would not from thence follow, that the Burgesses can be tied down by an arbitrary Act of Council to purchase the Necessaries of Life, or other Conveniencies, from those only who reside within the Borough. Where there are no Incorporations, the Burgesses are at Liberty to traffick at large with the whole World, and to purchase whatever they have Occasion for, as they can be best served.

The Statute 1535 has no Sort of Connexion with the Point in Dispute. The establishing and Superintendency of Hostellaries, and setting reasonable Prices upon Vivres does of Right belong to every Judge-ordinary within his Bounds, as this also is competent to the Baron within his Property. And if the Defenders shall be found fault with, either for importing insufficient Liquor, or exacting an exorbitant Price, they shall not de-

decline the Cognizance of the Magistrates of *Perth*; but the present Ground of Complaint is of a different Stile, *viz.* That the Ale by them brewed is of a better Quality, or a Trifle cheaper than the Brewers in *Perth* have been in use to exact, or are willing to sell: So that however the Brewers within the Town may find their Account to keep up these Prices, or to brew Ale of an inferior Quality, the Community itself, and every Individual thereof, must be of Opinion, that it is more for their Advantage to be unrestrained in this Particular. This Claim is founded upon natural Liberty, and the Tendency of the other is to establish a Monopoly in favours of a few particular Brewers within the Town, who are no Incorporation, and consequently ought not to complain, where the Inhabitants are left to purchase this common Necessary of Life as they can best be served.

*In respect whereof, &c.*

ALEX. LOCKHART.

*ACT of Council by the Magistrates of Perth,  
against importing Ale into the Town of Perth.*

**A**T *Perth*, and within the Council-house thereof, *Monday* the 12th Day of *December* 1748 Years: The Magistrates and Town-council considering, that the importing into the Town Ale or Beer brewed without the Liberties thereof, is very prejudicial to the Maltsters and Brewers of this Burgh, and to the Town's Mills, they therefore inhibit and discharge any of the Inhabitants of this Borough, at any Time to come, to import into the Town any Ale or Beer brewed without the Liberties thereof, under the Penalty of 5 *l. Sterling*



*ling* Money for each Transgression in the first Instance, and under such further Penalty for any subsequent Transgression, as the Magistrates, before whom the Cause is brought, shall find just, to be paid to the Town Treasurer for the Time, and to be applied by the Magistrates for the publick Use of the Burgh. And they further enact and declare, and appoint the Magistrates for the Time being, to cause all Ale or Beer, brewed without the Liberties of the Town, and imported by Strangers for Consumption in the Town, to be seized and confiscated for the publick Use of the Town; excepting only such Ale and Beer as landed Gentlemen or Ladies, residing in the Town, may bring in for the Use of their own Families in Town, the said Ale or Beer being brewed at their own Country Seats, of Malt of the Produce of their own Lands. And they ordain this Act to be publickly intimated by Tuck of of Drum, that none may pretend Ignorance.

*Extracted by*

WAL. MILLER, *Dep.*

